

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

CASE NO. 2:10-CR-20582

HON. MARIANNE O. BATTANI

RUFUS TOMPKINS,

Defendant.

/

ORDER TRANSFERRING REQUEST TO REOPEN § 2255 MOTION

Before the Court is Defendant Rufus Tompkins' Motion for Relief From Judgment Pursuant to Rule 60(b)(6). (Doc. 51). Tompkins requests the Court to reopen his May 22, 2013 motion to vacate the Court's judgment pursuant to 28 U.S.C. § 2255, which was denied on October 22, 2014. (Doc. 47).

A Rule 60(b) motion that attempts "to add a new ground for relief" or "attacks the federal court's previous resolution of a claim on the merits" is "effectively a motion to vacate, set aside, or correct the sentence, and thus should be considered a § 2255 motion." In re Nailor, 487 F.3d 1018, 1022 (6th Cir. 2007) (citing Gonzalez v. Crosby, 545 U.S. 524, 524 (2005)). Review of Tompkins' motion reveals that his present claims seek to add new grounds for relief and/or to attack the resolution of his previous § 2255 motion on the merits. (See generally, Doc. 51). The present motion must therefore be considered a successive motion under § 2255, which this Court lacks jurisdiction to consider because Tompkins has not obtained certification from the Sixth Circuit Court of Appeals. 28 U.S.C. § 2244(b)(3); 28 U.S.C. § 2255(h) ("A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals[.]").

Accordingly, Tompkins' motion is hereby **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1631 for authorization under 28 U.S.C. § 2244(b)(3)(A) as a successive petition for habeas relief.

IT IS SO ORDERED.

Date: October 6, 2017

s/Marianne O. Battani
MARIANNE O. BATTANI
United States District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on October 6, 2017.

s/ Kay Doaks
Case Manager